

IOWA DEPARTMENT OF INSPECTIONS AND APPEALS

Division of Administrative Hearings
Lucas State Office Building
Des Moines, Iowa 50319

DECISION OF THE ADMINISTRATIVE LAW JUDGE

**MARTIN G BARRERA
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**INVESTIGATION AND RECOVERY
IOWA WORKFORCE DEVELOPMENT
1000 EAST GRAND AVENUE
DES MOINES IA 50319**

DAN ANDERSON, IWD

Appeal Number: 06-IWDUI-001
OC: 12/04/05
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to the department. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

February 10, 2006

(Decision Dated & Mailed)

Section 96.4-3 - Able and Available
871 IAC 24.22(2)o – Lawfully Authorized to Work

STATEMENT OF THE CASE:

The claimant filed an appeal from an Iowa Workforce Development Department decision dated December 23, 2005, reference 02, which held the claimant ineligible for benefits December 18, 2005, because the claimant was not legally authorized to work in the United States.

The hearing was held pursuant to due notice on February 6, 2006, by telephone conference call. The claimant, and his wife, India Barrera participated. Cindy Stroud, Investigator, participated on behalf of Iowa Workforce Development, Investigation and Recovery.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, finds that: The claimant filed a claim for unemployment insurance benefits effective December 4, 2005. Since the claimant stated he was not a United States citizen, the matter was transmitted to Investigator Stroud to determine whether the claimant was legally authorized to work in the United States.

Stroud made an inquiry of the Immigration and Naturalization Service regarding the claimant's work status, and INS requested her to make a secondary verification. Stroud mailed a notice to the claimant dated December 7, 2005 that asked the claimant to submit his INS I-94 employment authorization or resident alien card by December 22. When the claimant failed to respond, he was disqualified from receiving unemployment benefits as an individual who was not authorized to work in the United States (not able/available for work).

The claimant submitted a copy of an INS employment authorization form with his appeal that was not readable. During the hearing, the claimant's wife stated he had received a new authorization that allowed him to work from February 4, 2006 to September 2, 2006. Stroud gave instructions to the claimant and his wife to immediately take the form to the Ames, Iowa workforce office and have personnel notify her of the authorization after viewing the form.

Stroud called about two hours after the hearing to confirm that she had received the verification of the authorization to work from the Ames workforce center, and the "lock" on the claimant's claim for benefits had been removed. The department considers the claimant eligible for benefits.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is able and available for work.

Iowa Code Section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

871 IAC 24.22(96) Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) *Able to work.* An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

(2) *Available for work.*

0. Lawfully authorized to work. An individual who is not lawfully authorized to work within the United States will be considered not available for work.

The administrative law judge concludes that the claimant is lawfully authorized to work in the United States due to a department verification of this employment status, such that he is able and available for work pursuant to the code sections cited above. In the interest of justice and expediency (since the claimant has been denied benefits for an extended period), the department immediately removed the lock on the claimant's claim once the Investigator verified his employment status.

DECISION:

The decision of the representative dated December 23, 2005, reference 02, is REVERSED. The claimant is legally authorized to work in the United States, and he is able and available for work, such that the disqualification is removed. The claimant is entitled to receive benefits, provided he is otherwise eligible.

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